IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Case No. **R.S.A No. 118 of 1981**

Date of decision : July 20, 2006.

Pritam Kaur ... Appellant

Versus

Gian Chand @ Gian Singh ... Respondent

Present: Mr. Sarwan Singh, Sr. Advocate
with Mr. A.S.Parmar, Advocate
for the appellant.

Mr.G.S.Jaswal, Advocate
for the respondent.

...

RANJIT SINGH, J

This RSA and RSA No.119 of 1981 have been heard together.

This is a case where a brother had sold the house of another brother to his own wife on the basis of a General Power of Attorney which allegedly had not been executed at all by the brother whose house was sold. In RSA No.119 of 1981, the same brother had sold share of brother in land to his own son. The wife, (Pritam Kaur, plaintiff), who was the beneficiary of sale, had filed a suit for possession on the basis of the ownership so acquired. She, however, failed in the said suit and has remained unsuccessful before the first Appellate Court. She is before this Court in the present regular second appeal.

The facts in this case are that Gian Singh, resident of Village Kandhala Sheikhan, Tehsil Dasuya had sold the suit property to the appellant-plaintiff Pritam Kaur, his wife, through a registered sale deed dated 30.5.1974 for a consideration of Rs.1,500/-. The possession of the suit property was statedly delivered to the appellant-plaintiff on the same date. This sale deed of a property belonging to respondent-Ram Chand (since deceased) brother of said Gian Singh

was executed on the basis of a General Power of Attorney, allegedly given in favour of Gian Singh by his brother,deceased respondent-defendant. Pleading that respondent-defendant had taken forcible possession of the suit property about 5 months prior to the filing of the suit, the appellant-plaintiff had approached the Civil Court by way of this suit.

The respondent-defendant, when summoned, admitted that the suit property was in his ownership. He, however, denied the execution of the Power of Attorney in favour of Gian Singh, his brother and husband of the beneficiary of appellant-plaintiff. It was accordingly pleaded in the written statement that Gian Singh had no competence to sell the property, there being no valid Power of Attorney executed by the respondent-defendant in his favour. It was accordingly submitted that the sale in favour of the appellant-plaintiff was void and ineffective. On the basis of these conflicting pleas, issues were framed by the trial Court. The main issue requiring decision in this case related to the execution of Power of Attorney by the respondent-defendant in favour of Gian Singh. The second issue, which was dependent on this issue and was to the effect as to whether Gian Singh was competent to transfer the property in favour of the appellant-plaintiff .

The appellant-plaintiff examined Ujagar Singh, PW-1, Karnail Singh, PW-4 as the attesting witnesses to the Power of Attorney. Gian Singh appeared as DW-3 and certified copy of this General Power of Attorney was exhibited as PW-1/A. The attesting witnesses gave evidence that this Power of Attorney had been executed by the respondent-defendant and had been got registered before the Sub-Registrar. In rebuttal, the respondent-defendant appeared in the witness box and stated that he never executed this General Power of Attorney in favour of Gian Singh. The trial Court found that Ujagar Singh, PW-1 was resident of Delhi whereas the second attesting witness Karnail Singh, PW-4 was son of Gian Singh in whose favour this Power of Attorney had been executed. From the cross-examination, it was revealed that Ujagar Singh even did not know

the respondent-defendant Ram Chand who was resident of Village Kandhala Saheikhan. Accordingly, the trial Court rightly found that since this witness did not personally know the respondent-defendant, his evidence that the respondent-defendant had executed this Power of Attorney was of no consequence. The evidence of Karnail Singh, PW-4, the second attesting witness was also not believed by the trial Court rightly, if I may say so,as he was found to be son of Gian Singh and thus an interested witness to support the case of his mother, the appellant-plaintiff. This General Power of Attorney was allegedly executed at Delhi. The Advocate, who had scribed the same, was not produced in evidence. It was, accordingly, found that the execution of this General Power of Attorney had not been proved by the appellant-plaintiff.

Not only this, it was also held that the Power of Attorney for sale of property was required to be registered at a place where the principal resides. Referring to the provisions clause (3) of Section 32 of the Indian Registration Act, 1908, it was observed that the sale deed executed on the basis of General Power of Attorney was compulsorily to be registered and could be presented for registration by an agent duly authorized by the Attorney. As per Section 33(1)(a), such a Power of Attorney must be registered by a Registrar or Sub-Registrar within whose District or Sub-District the principal resides and further that no other Power of Attorney was to be recognized. Based on these provisions, it was held that the provisions of the Indian Registration Act would imply that the Power of Attorney for transfer of immovable property was necessarily to be registered at the place where the principal resided and no other Power of Attorney could be considered valid in the eyes of law. Reference was made to a Privy Council decision in the case of .....AIR 1914 PC 16-18. It was observed that this mandatory provision had been made to save innocent public from fraud by providing that no Power of Attorney was to be recognized in the eyes of law. Ram Chand, respondent-defendant admittedly was residing at Village Kandhala

Sheikhan. He was shown to be resident of House No. 6448, Dev Nagar, Karol Bagh, Delhi, which is the residential house of Gian Singh, the alleged holder of Power of Attorney. The suit property is situated in village Kandhala Sheikhan. The respondent-defendant was not resident of Delhi and, as such, any Power of Attorney for transfer of immovable property to be valid was required to be executed at Dasuya as the village Kandhala Sheikhan fell in Tehsil Dasuya. It was also found that there was no evidence on record to show that the respondent-defendant had any property or residence at Delhi. He, as such, could not have been considered to be resident of Delhi merely on the ground that he had gone to Delhi on some casual visit. It was, accordingly, found that the alleged Power of Attorney was not legally valid and, as such, was a fabricated document. The first Appellate Court, while upholding the finding of the trial Court, went on to observe that even Ujagar Singh, the attesting witness was the immediate neighbour of Gian Singh and thus was interested in advancing the case of his neighbour. Endorsement made by the Sub-Registrar on the Power of Attorney, Exh. 1/A was taken note of to observe that the address of respondent-defendant was given as Village Kandhala Sheikhan Tehsil Dasuya District Hoshiarpur. The second attesting witness, Karnail Singh, even had admitted in his cross-examination that respondent-defendant was resident of village Khandhala Sheikhan where he had a permanent residence. Accordingly, it was found that the Power of Attorney could not be executed and authenticated by Sub-Registrar at Delhi. Relying upon the provisions of Section 33 (1)(a), it was said that Gian Singh could not have presented the sale deed for registration as he was not an agent authorized by Power of Attorney executed and authenticated in a manner given in this Section. It was further found that the sale consideration of Rs.1,500/- had not been shown to have passed. It was mentioned in the sale deed that the vendor had already received Rs.1,500/- for meeting the expenses of marriage of his sister's son and daughter. No worthwhile evidence in this regard was found to have been led in this case. Even the falsity of this

statement came out during the course of examination of the witnesses. The appellant-plaintiff Pritam Kaur stated that she had paid Rs.1,500/- to Gian Singh, who, while under cross-examination, stated that he had spent this money on the ailment of Ram Chand. There was, thus, total contrast between the contents of the sale deed and the evidence that was led during the trial. As per the recitals in the sale deed, deceased Ram Chand had already received the amount as earlier notice. This sale deed was, accordingly, found to have been done even without consideration and, accordingly, the appeal was dismissed.

Mr. Sarwan Singh, learned Senior Counsel appearing on behalf of the appellant had made an attempt to show that the General Power of Attorney in this case was validly executed and has been wrongly discarded on the ground that it was required to be registered at Dasuya. He says that the respondent-defendant was temporary resident of Delhi. He, however, could not point out to any evidence which would indicate that the respondent-defendant was even residing at Delhi temporarily. A casual visit, even if true, to a place where his brother was staying, would not mean that the respondent-defendant had any temporary residence at Delhi. He otherwise could not make any submission worth consideration in regard to the requirement of law, as laid down by Section 32 (a) of the Registration Act. He made a feeble attempt to urge that Section 32 (c) would be attracted in this case to say that since Gian Singh had executed the sale deed who was attorney of respondent-defendant and hence he could present the same before the Sub-Registrar.

Section 33 (1) (a) clearly provides that for the purpose of this Section, the Power of Attorney, as mentioned therein, shall not be recognized and it provide " if the principal a the time of executing the power of attorney resides in any part of British India in which this act is for the time being in force, a power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-district the principal resides." It is, thus, clear that

merely holding that a Power of Attorney would not be enough to entitle the Attorney holder to present the sale deed for registration on behalf of the principal. In all such cases, the sale deed could be presented for registration on behalf of the principal if the principal at the time of executing the Power of Attorney was residing within the District or Sub-District where the said Power of Attorney was executed. In the present case, as such, Gian Singh was not competent to present this sale deed before the Sub-Registrar at Dasuya. Even otherwise, the counsel could not justify the conduct of either the plaintiff or said Gian Singh for getting the sale deed executed. To my mind, this appears to be a case of clear fraud. Gian Singh, who deceived his innocent brother in faking this Power of Attorney was not rest content with that but went ahead to sell the house of his brother to his own wife without any consideration or without any payment. His version and that of the appellant-plaintiff that the appellant had paid consideration for the sale, as already noticed, was found to be totally false and misleading. Even otherwise also, on the basis of the evidence led in this case, it cannot be said that the respondent-defendant ever executed this Power of Attorney. Gian Singh, the attorney holder made his son and one of the witnesses, the other being his neighbour, appears to have obtained this Attorney by some impersonation. This is indicated from the fact that one of the attesting witnesses even did not know the respondent-defendant. The scribe of this attorney was never produced. Having regard to all these factors, it is not proved that this Power of Attorney was executed. The findings of the trial Court as well as first Appellate Court are perfectly legal and justified needing no interference. The present appeal, as such, deserves to be dismissed and it is accordingly dismissed with costs, which are assessed at Rs.5,000/-.

(RANJIT SINGH)
JUDGE

July 20, 2006
RS